

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
MEMORANDUM**

**TO: BUSINESS & LABOR INTERIM COMMITTEE**

**FROM: EARL DORIUS**

**DATE: APRIL 28, 2010**

**RE: PROPOSED SINGLE EVENT PERMIT RULE AMENDMENTS**

**BACKGROUND.** Under Utah Code 32A-7, single event permits may be issued by the commission for the sale of all types of alcohol by a qualified permit holder who is “*conducting a convention, civic or community enterprise.*” Permits may be issued to the following bona fide organizations or entities that have been in existence for at least one year prior to the date of application: partnerships, corporations, limited liability companies, churches, political organizations, incorporated associations, recognized subordinate lodges, chapters, or other local units of any of the above entities, state agencies, and political subdivisions of the state including counties and municipalities.<sup>1</sup>

The permit allows the storage, sale, service, and consumption of distilled spirits, wine, heavy beer and beer at an event at which such things are otherwise prohibited by the Act.”<sup>2</sup> There are two types of single event permits. One is for events that are over a period not to exceed 120 consecutive hours. The other is for events over a period not to exceed 72 hours.<sup>3</sup> Only four permits in any one calendar year may be issued to the same entity for the 120 hour permits, and up to 12 permits per year may be issued for the 72 hour permits.<sup>4</sup>

Before the commission may issue a single event permit, it must be provided with: (1) written consent from the local governmental authority where the event will be held; (2) the times, dates, location, estimated attendance, nature, and purpose of the event; (3) floor plans designating alcohol storage, sale, service, and consumption areas; and (4) the purpose of the organization or entity conducting the event.<sup>5</sup>

The temporary beer special event laws were written long after the single event permit laws and

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<sup>1</sup>Utah Code Ann. §32A-7-101(1).

<sup>2</sup>32A-7-101(2).

<sup>3</sup>*Id.*.

<sup>4</sup>32A-7-101(3).

<sup>5</sup>32A-7-102(2).

contain the following new provision: *“A temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of state licensing under Part 2, On-Premise Beer Retailer License.”*<sup>6</sup> There is no similar provision in the single event laws.

**REASON FOR PROPOSED RULE AMENDMENTS.** At the November 17, 2009 commission meeting, staff of the DABC noted that a particular business operator had been obtaining a series of single event permits during the past year to provide alcohol at concerts, dances, and other events held at his own theater/cabaret venue.<sup>7</sup> These permits were not being sought by independent groups that were renting the facility for their own events, but by various “for profit” companies affiliated with the operator of the venue. Staff questioned whether this was an appropriate use of the single event permit.

Many of the events appeared to be nothing more than the entertainment booked by the operator of the theater/cabaret.<sup>8</sup> This differs from typical events for which single event permits are sought like charitable fund-raisers or community events like arts, film, music, food, and ethnic festivals, car shows, art gallery strolls, golf tournaments, rodeos, holiday season events, galas and balls, etc. Yet, some of the events at the theater/cabaret somewhat resembled concert and theatrical events held at the Rose Wagner Performing Arts Center which obtains single event permits for such events. However, the Rose Wagner Center is a government owned and operated property. Also, some of the events were similar to those held by Park City Performances that obtains single event permits for performances held at the Egyptian Theatre in Park City. However, Park City Performances is a 501(c)(3) charitable, non-profit association and thus clearly a “civic, community enterprise”.<sup>9</sup>

The operators of the theater/cabaret asserted that they were no different than catering businesses that obtain single event permits for various events that they cater throughout the state. However, unlike the theater/cabaret operator, caterers obtain permits for a series of one-time events for which the catering business has been retained by a separate group to provide food and beverage.

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<sup>6</sup>32A-10-301(3)(c).

<sup>7</sup>Two thirds of the facility is made up of theater-style fixed seating (210 seats). There is also a small dance floor area, a stage, and a small concession primarily for dispensing beverages and snack foods. There is no kitchen facility on the premises. 70% of the revenue is from ticket sales. Ticket sales are \$10 to \$40/ ticket. Beverage sales are approximately 30%.

<sup>8</sup>Some of the events, however, were rentals of the theater by local community groups, non-profit organizations, and fund-raising groups.

<sup>9</sup>Park City Performances’s mission statement reads:

*“The Egyptian Theatre is dedicated to enriching lives through the performing arts. The Theatre is a non-profit organization committed to serving as a community asset by providing a variety of artistic performances, education, and outreach programs.”*

The events are not the catering business's own events.

DABC staff was also concerned that the operator of the theater/cabaret was obtaining permits in lieu of obtaining a full year club, restaurant or beer license. This would run counter to the legislative intent behind the statute that prohibits the use of temporary event beer permits to avoid state on-premise beer licensing.<sup>10</sup> It would also run counter to the commission's unwillingness to grant single event permits to businesses to "tie them over" until they can receive their permanent licenses.

Now that the commission has reached the statutory quotas on club, full-service restaurant, and limited-service restaurant (beer and wine only) licenses, there is a concern that some applicants for these licenses may try to apply for single event permits until they can obtain the licenses they need. This raises the additional concern that the operational restrictions normally applicable to certain licensees like social clubs are not present when an ongoing business operates under a series of single event permits.<sup>11</sup> To illustrate, minors are not allowed on the premises of a social club; clubs must use age verification devices; clubs cannot be in proximity to schools, churches, parks, playgrounds, and libraries; clubs must obtain dram shop insurance; drinks in clubs must be dispensed using calibrated/metered dispensing devices or systems; criminal background checks are required on club applicants and managers; clubs must maintain certain books, records, ledgers, etc. which are subject to DABC audit; and clubs must have food available at all times that alcohol is dispensed. None of these are required if a business operates under a single event permit.

The commission is of the view that, as a matter of public policy, single event permits should not be issued to on-going, for profit business venues like the theater/cabaret, or to businesses that qualify for year-round licenses, but are not able to get them because of the quota situation. Rather, these permits should be issued for legitimate special events that are in the nature of conventions, civic or community enterprises. The proposed rule enumerates factors the commission may consider in assessing whether to issue these permits such as:

- (1) the purpose of the entity or organizations
- (2) the nature and purpose of the event
- (3) the type of entertainment, if any, at the event
- (4) the location of the event
- (5) the frequency of events held at the same location

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<sup>10</sup> Requiring full licensing would not preclude a group unaffiliated with the licensee from booking the venue for a one-time event and obtaining their own single event or temporary beer permit for the event. In such a situation, the alcohol inventory of the licensee would not be used, the group would provide its own alcohol, and the revenue from alcohol sales would go to the group, not to the licensee. The licensee would merely receive a rental fee from the group which could not be linked to a percentage of alcohol sales

<sup>11</sup> DABC recognized that the theater/cabaret had been voluntarily complying with many if not most of the social club operational requirements.

- (6) whether the location is government owned and operated
- (7) the extent to which the event benefits the community, is held for charitable purposes, or is held for the profit of the entity or organization.

The commission is aware that there may very well be a need for a new type of license for theater/cabaret venues. However, this would require legislation. It is clear that current social and dinner club licenses, and restaurant licenses do not fit very well for theater-style venues that have theater seating. Social club licenses do not allow minors on the premises. Dinner club licenses require that minors always be accompanied by an adult. Thus, all age events would be prohibited in social clubs and restricted in dinner clubs. Restaurant licenses require patrons to be served and seated at tables - not in theater-style seating.<sup>12</sup>

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<sup>12</sup>*Park City Performances dba The Egyptian Theater wrote the following:*

*"We are a 501(c)(3) non-profit organization. Our mission statement is as follows: 'We exist to foster and support an internationally recognized musical community in our mountain setting.' It has been my experience that liquor laws in Utah are not currently written in favor of performing arts organizations. We do not 'fit' under any current statutes. We are not a restaurant, club, fraternal organization, or a tavern. [We request] that the UDABC consider making a provision for non-profit performing arts organizations in your recommendations to the legislature. We propose that you allow organizations such as ours to apply for a special 'Wine and Beer' license. We also propose that under this special license, that any provisions for 'food or private membership' be excluded. Groups such as ours are always in search of financial stability. We are also constantly searching for means of improving our patron's experience. Since these performances take place, generally, early in the evening and usually last no longer than two hours, we feel that the availability of wine and beer would not create a public safety concern. We have served both wine and beer in the past at our performances. We have been able to do this by applying for 'Special Event' permits. This, however, does not solve our needs on a year-round basis. We have never experienced any problems with over-consumption or consumption by minors at any of the above-mentioned shows. Whether the best solution is to establish broader special event licensing criteria, or to allow for a year-round permit needs to be discussed. We would like to see both special event licensing at certain locations and a year-round 'Performing Arts Wine & Beer' license be approved. It is our belief that many non-profit performing arts organizations in Utah would benefit from these changes. With new legislation, groups like ours would be able to enhance and broaden our artistic offerings."*